

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JERRY D. KING,

Plaintiff,

v.

CAROLYN W. COLVIN,
Commissioner of Social Security,

Defendant.

NO: 1:15-CV-3072-RMP

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

BEFORE THE COURT are Plaintiff Jerry D. King's Motion for Summary Judgment, **ECF No. 14**, and Commissioner of Social Security Carolyn W. Colvin's Motion for Summary Judgment, **ECF No. 15**. The Court has reviewed the motions, the reply memorandum (ECF No. 16), the administrative record, and is fully informed.

BACKGROUND

Jerry D. King protectively filed an application for both Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) on August 3, 2012. ECF No. 9-2 at 21, Tr. 20. In both applications, Mr. King alleged disability beginning

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1 November 1, 2010. *Id.* Mr. King's applications were denied initially on September
2 28, 2012, and upon reconsideration on December 14, 2012. *Id.* Mr. King requested
3 a hearing, which was held via videoconference before Administrative Law Judge
4 ("ALJ") Glenn G. Meyers on January 14, 2014. *Id.* Mr. King was present and
5 represented by counsel Jeremy D. Wallace. *Id.* The ALJ heard testimony from
6 vocational expert ("VE") Trevor Duncan. *Id.*

7 The ALJ found that Mr. King had not engaged in substantial gainful work,
8 as defined in 20 C.F.R. §§ 404.1572(a) and 416.920(b), since November 1, 2010.
9 ECF No. 9-2 at 25, Tr. 24. Further, the ALJ found that, for the period from
10 November 1, 2010, through May 31, 2012, Mr. King had the following severe
11 impairment as defined by 20 C.F.R. §§ 404.1520(c) and 416.920(c): lumbar spine
12 stenosis. *Id.*

13 The ALJ found that Mr. King did not have an impairment or combination of
14 impairments from November 1, 2010, through May 31, 2012, that met or medically
15 equaled the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart
16 P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525, and 404.1526) and 20 C.F.R.
17 Part 416, Subpart I, Appendix 1 (20 C.F.R. §§ 416.920(d), 416.925, and 416.926).
18 ECF No. 9-2 at 26, Tr. 25. The ALJ further found that Mr. King had the residual
19 functional capacity ("RFC") to "perform light work . . . except he was limited to
20 occasional stooping, kneeling, crouching, crawling, and climbing ladders, ropes
21 and scaffolds." ECF No. 9-2 at 26, Tr. 25.

1 Given Mr. King's age, education, work experience, and RFC, the ALJ found
2 that "the claimant was capable of performing past relevant work as a parts clerk."
3 ECF No. 9-2 at 28, Tr. 27. The ALJ concluded that Mr. King was not under a
4 disability as defined by the Social Security Act from November 1, 2010, through
5 May 31, 2012. ECF No. 9-2 at 29, Tr. 28.

6 Echoing the earlier holding, the ALJ concluded that Mr. King had the
7 following severe impairment from June 1, 2012, through June 1, 2013: lumbar
8 spine stenosis. *Id.* Further, the ALJ found that Mr. King did not have an
9 impairment or combination of impairments from June 1, 2012, through June 1,
10 2013, that met or medically equaled the severity of one of the listed impairments in
11 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,
12 and 404.1526) and 20 C.F.R. Part 416, Subpart I, Appendix 1 (20 C.F.R.
13 §§ 416.920(d), 416.925, and 416.926). ECF No. 9-2 at 29, Tr. 28. The ALJ further
14 found that Mr. King had the residual functional capacity ("RFC") to "perform the
15 full range of sedentary work." ECF No. 9-2 at 32, Tr. 31.

16 Given Mr. King's age, education, work experience, and RFC, the ALJ found
17 that "[f]rom June 1, 2012 through June 1, 2013, the claimant was unable to
18 perform any past relevant work." ECF No. 9-2 at 33, Tr. 32. Further, the ALJ
19 determined that "there were no jobs that existed in significant numbers in the
20 national economy that the claimant could have performed." ECF No. 9-2 at 34,
21

1 Tr. 33. The ALJ concluded that “[t]he claimant was under a disability, as defined
2 by the Social Security Act, from June 1, 2012 through June 1, 2013.” *Id.*

3 However, the ALJ found that “[t]he claimant has not developed any new
4 severe impairment or impairments since June 2, 2013, the date the claimant’s
5 disability ended.” *Id.* The ALJ concluded that “[m]edical improvement occurred as
6 of June 2, 2013, the date the claimant’s disability ended.” ECF No. 9-2 at 37,

7 Tr. 36. The ALJ determined that “[a]fter careful consideration of the entire record,
8 I find that, beginning June 2, 2013, the claimant has had the residual functional
9 capacity to perform light work . . . except he is limited to occasional stooping,
10 kneeling, crouching, crawling, and climbing ladders, ropes and scaffolds.” *Id.*

11 The ALJ found that “[b]eginning June 2, 2013, the claimant has been
12 capable of performing past relevant work as a parts clerk.” ECF No. 9-25 at 39,
13 Tr. 38. As such, the ALJ determined that “[t]he claimant’s disability ended June 2,
14 2013.” *Id.* Mr. King’s application was granted as to June 1, 2012, through June 1,
15 2013, on May 16, 2014. ECF No. 9-2 at 39, Tr. 38.

16 Mr. King filed a request for review by the Appeals Council, which was
17 denied on April 6, 2015. ECF No. 9-2 at 2, Tr. 1. Mr. King then filed a complaint
18 in the District Court for the Eastern District of Washington on May 12, 2015, ECF
19 No. 1, and the Commissioner answered the complaint on August 3, 2015. ECF
20 No. 8. This matter is therefore properly before the Court pursuant to 42 U.S.C.
21 § 405(g).

STATEMENT OF FACTS

The facts of this case are set forth in the administrative hearing transcripts and record, ECF No. 9. Mr. King was 59 years old when he applied for DIB and SSI and 60 years old at the hearing. *See* ECF No. 9-2 at 21, Tr. 20.

STANDARD OF REVIEW

Congress has provided a limited scope of judicial review of a Commissioner's final decision. 42 U.S.C. § 405(g). A reviewing court must uphold the Commissioner's decision, determined by an ALJ, when the decision is supported by substantial evidence and not based on legal error. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). Substantial evidence is more than a mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence "means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation omitted).

The reviewing court should uphold "such inferences and conclusions as the [Commissioner] may reasonably draw from the evidence." *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a whole, not just the evidence supporting the Commissioner's decision. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528, 530 (9th Cir. 1986) ("This court must consider the record as a whole, weighing both the evidence that supports and detracts from the [Commissioner's]

1 conclusion.”). “[T]he key question is not whether there is substantial evidence that
2 could support a finding of disability, but whether there is substantial evidence to
3 support the Commissioner’s actual finding that claimant is not disabled.” *Jamerson*
4 *v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

5 It is the role of the trier of fact, not the reviewing court, to resolve conflicts
6 in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
7 rational interpretation, the reviewing court may not substitute its judgment for that
8 of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus,
9 if there is substantial evidence to support the administrative findings, or if there is
10 conflicting evidence that will support a finding of either disability or nondisability,
11 the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226,
12 1229–30 (9th Cir. 1987).

13 SEQUENTIAL PROCESS

14 Under the Social Security Act (the “Act”),

15 an individual shall be considered to be disabled . . . if he is unable to
16 engage in any substantial gainful activity by reason of any medically
17 determinable physical or mental impairment which can be expected to
result in death or which has lasted or can be expected to last for a
continuous period of not less than 12 months.

18 42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be
19 determined to be under a disability only if his impairments are of such severity that
20 the claimant is not only unable to do his previous work but cannot, considering the
21 claimant’s age, education, and work experience, engage in any other substantial

1 gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

2 “Thus, the definition of disability consists of both medical and vocational
3 components.” *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

4 The Commissioner has established a five-step sequential evaluation process
5 for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4) and
6 416.920(a)(4). Step one determines if the claimant is engaged in substantial gainful
7 activities. If the claimant is engaged in substantial gainful activities, benefits are
8 denied. 20 C.F.R. §§ 404.1520(a)(4)(i) and 416.920(a)(4)(i).

9 If the claimant is not engaged in substantial gainful activities, the ALJ, under
10 step two, determines whether the claimant has a medically severe impairment or
11 combination of impairments. If the claimant does not have a severe impairment or
12 combination of impairments, the disability claim is denied. 20 C.F.R.
13 §§ 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

14 If the impairment is severe, the evaluation proceeds to step three, which
15 compares the claimant’s impairment to a number of listed impairments
16 acknowledged by the Commissioner to be so severe as to preclude substantial
17 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii); *see also*
18 20 C.F.R. §§ 404, Subpt. P, App. 1 and 416, Subpt. I, App. 1. If the impairment
19 meets or equals one of the listed impairments, the claimant is conclusively
20 presumed to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

1 Before proceeding to step four, the claimant's RFC is assessed. 20 C.F.R.
2 §§ 404.1545(a)(1) and 416.945(a)(1). An individual's RFC is the ability to do
3 physical and mental work activities on a sustained basis despite limitations from
4 any impairments. 20 C.F.R. §§ 404.1545(a)(1) and 416.945(a)(1).

5 If the impairment is not one conclusively presumed to be disabling, the
6 evaluation proceeds to step four, where the ALJ determines whether the
7 impairment prevents the claimant from performing work he has performed in the
8 past. If the claimant is able to perform his previous work, the claimant is not
9 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv).

10 If the claimant cannot perform his previous work, the final step considers
11 whether the claimant is able to perform other work in the national economy in light
12 of his RFC, age, education, and past work experience. 20 C.F.R.
13 §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v).

14 At step five, the initial burden of proof rests upon the claimant to establish a
15 prima facie case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d
16 920, 921 (9th Cir. 1971). The claimant satisfies this burden by establishing that a
17 physical or mental impairment prevents him from engaging in his previous
18 occupation. The burden then shifts to the Commissioner to show that (1) the
19 claimant can perform other substantial gainful activity and (2) a "significant
20 number of jobs exist in the national economy" which the claimant can perform.
21 *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

ISSUES

Mr. King alleges that the ALJ committed reversible error by (1) improperly rejecting medical evidence; (2) improperly finding that Mr. King's right shoulder impairment and rheumatoid arthritis were not severe impairments at step two; and (3) improperly finding that Mr. King lacked credibility. *See generally* ECF No. 14. Mr. King also asserts that the ALJ failed to discharge his obligation to develop the record. *See id.*

DISCUSSION

I. Rejection of Medical Evidence

Mr. King argues that the ALJ improperly rejected the medical opinion of Dr. Wendy Eider, M.D. ECF No. 14 at 11–14. Relatedly, Mr. King asserts that the ALJ erred by not fully developing the record with respect to Dr. Eider's opinion. *Id.* at 15–16.

A. Legal Standard for Rejecting Medical Opinion Evidence

“[T]he Commissioner must provide ‘clear and convincing’ reasons for rejecting the uncontradicted opinion of an examining physician.” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If controverted, “the opinion of an examining doctor . . . can only be rejected for specific and legitimate reasons that are supported by substantial evidence in the record.” *Id.* at 830–31. The same analysis applies to the medical opinions of treating physicians. *Id.* at 830. “[I]t is incumbent

1 on the ALJ to provide detailed, reasoned, and legitimate rationales for disregarding
2 the physicians' findings." *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988).

3 Concerning medical opinion evidence, "[t]he ALJ is responsible for
4 resolving conflicts in medical testimony, and resolving ambiguity. Determining
5 whether inconsistencies are material (or are in fact inconsistencies at all) and
6 whether certain factors are relevant to discount the opinions . . . falls within this
7 responsibility." *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th
8 Cir. 1999).

9 **B. Dr. Wendy Eider**

10 ***1. Rejection of Medical Opinion***

11 Dr. Eider opined that "Jerry King has new onset rheumatoid arthritis
12 involving wrists, hands, shoulders and feet. He is on medication but has active
13 disease despite therapy. He is disabled due to his arthritis and is expected to be
14 disabled indefinitely." ECF No. 9-10 at 184, Tr. 879.

15 The ALJ gave Dr. Eider's opinion "no weight." ECF No. 9-2 at 35. Tr. 34.
16 The ALJ noted that (1) "the medical records in evidence show no objective
17 findings of rheumatoid arthritis affecting the shoulders or feet"; (2) "whether or not
18 the claimant is disabled is an administrative finding and an issue reserved to the
19 Commissioner"; and (3) "at the hearing the claimant testified that his right hand
20 was fine and his ability to handle, finger and feel were all okay. He said there was
21 nothing wrong with his left hand." *Id.*

1 Mr. King alleges that (1) Dr. Eider’s opinion was entitled to greater weight
2 as that of an examining physician; (2) the ALJ impermissibly rejected Dr. Eider’s
3 opinion as to disability; and (3) improperly gave greater weight to the opinions of
4 non-examining physicians. ECF No. 14 at 11–14.

5 Mr. King is correct that, absent a contradicting medical opinion, the opinion
6 of an examining physician cannot be disregarded unless the ALJ provides “clear
7 and convincing” reasons. *See Lester*, 81 F.3d at 830. Further, Mr. King accurately
8 notes that examining physicians are generally given greater weight than
9 nonexamining physicians. *See Morgan*, 169 F.3d at 602 (“The opinion of a
10 nonexamining medical advisor cannot by itself constitute substantial evidence that
11 justifies the rejection of the opinion of an examining or treating physician.”). The
12 Court, however, finds that the reasons provided by the ALJ are sufficiently “clear
13 and convincing” to justify the ALJ’s rejection of Dr. Eider’s opinion.

14 First, the ALJ correctly noted that there was no objective medical evidence
15 in the record diagnosing Mr. King with rheumatoid arthritis in the shoulders or
16 feet. While a physician had noted arthritic symptoms in Mr. King’s hands, *see* ECF
17 No. 9-10 at 12, Tr. 707–08 (noting that Mr. King was “concerned about swelling
18 on his hands bilaterally” and prescribing “[t]ylenol for arthritis”), Mr. King has not
19 provided any medical evidence supporting a diagnosis of rheumatoid arthritis in
20 the shoulders or feet. As “[t]he ALJ need not accept the opinion of any physician,
21 including a treating physician, if that opinion is brief, conclusory, and inadequately

1 supported by clinical findings,” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
2 2002), the ALJ did not err in finding that Dr. Eider’s single sentence diagnosis was
3 unsupported by the medical record.

4 Second, the ALJ did not err in disregarding Dr. Eider’s conclusion regarding
5 disability. A physician “may render opinions on the ultimate issue of disability—
6 the claimant’s ability to perform work.” *Reddick v. Chater*, 157 F.3d 715, 726 (9th
7 Cir. 1998). While “[t]he administrative law judge is not bound by the
8 uncontroverted opinions of the claimant’s physicians on the ultimate issue of
9 disability . . . he cannot reject them without presenting clear and convincing
10 reasons for doing so.” *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993). A
11 physician’s “opinion on disability, even if controverted, can be rejected only with
12 specific and legitimate reasons supported by substantial evidence in the record.”
13 *Reddick*, 157 F.3d at 726.

14 Under 20 C.F.R. § 404.1527(d)(1), a conclusory statement “by a medical
15 source that [a claimant] is ‘disabled’ or ‘unable to work’ does not mean that [the
16 Social Security Administration] will determine that [a claimant is] disabled.” 20
17 C.F.R. § 404.1527(d)(1). However, an assessment of a claimant’s likelihood of
18 being able to sustain employment is not a conclusory statement as envisioned by
19 § 404.1527(d)(1). *See Hill v. Astrue*, 698 F.3d 1153, 1159–60 (9th Cir. 2012)
20 (finding that the ALJ should have considered physician’s opinion that the
21

1 claimant's "combination of mental and medical problems makes the likelihood of
2 sustaining full time competitive employment unlikely").

3 Here, Dr. Eider opined that Mr. King "is disabled due to his arthritis and is
4 expected to be disabled indefinitely." ECF No. 9-10 at 184, Tr. 879. Unlike in *Hill*,
5 Dr. Eider's conclusion is not supported by objective medical findings. Instead,
6 Dr. Eider merely offered the conclusory diagnosis that "Jerry King has new onset
7 rheumatoid arthritis involving wrists, hands, shoulders and feet." *Id.* As the ALJ
8 reasonably determined that Dr. Eider's opinion was not based on objective medical
9 evidence in the record, the ALJ permissibly disregarded Dr. Eider's conclusory,
10 unsupported statement as to disability.

11 Third, the ALJ permissibly rejected Dr. Eider's opinion on the basis of
12 Mr. King's testimony. Mr. King testified that his right hand "is fine," he has the
13 ability to "handle, finger, and feel, and grasp" with his right hand, and that there
14 was nothing wrong with his left hand. ECF No. 9-2 at 58, 61, Tr. 57, 60. As "[t]he
15 ALJ is responsible for resolving conflicts in medical testimony," *see Morgan*, 169
16 F.3d at 603, the ALJ did not err in finding that the inconsistency between
17 Dr. Eider's opinion and Mr. King's testimony discredited Dr. Eider's opinion.

18 Mr. King asserts that the ALJ should have given greater weight to Dr.
19 Eider's opinion as she is a "board certified rheumatologist," she "personally
20 examined Mr. King," and "there is no opinion from any doctor disputing the
21 diagnosis." ECF No. 14 at 12. However, an ALJ may permissibly discount the

1 uncontroverted opinion of an examining physician if the ALJ provides sufficient
2 “clear and convincing” reasons. *See Lester*, 81 F.3d at 830. As the ALJ provided
3 sufficiently “clear and convincing” reasons for giving “no weight” to Dr. Eider’s
4 opinion, the Court finds that the ALJ did not commit reversible error.

5 ***2. Obligation to Develop Record***

6 Mr. King separately asserts that the ALJ should have further developed the
7 record concerning Dr. Eider’s opinion. ECF No. 14 at 12–13, 15–16. Specifically,
8 Mr. King alleges that the ALJ “could have inquired of Dr. Eider as to the basis of
9 her diagnosis, and whether her diagnosis was based upon signs, symptoms, or
10 laboratory findings.” *Id.* at 12. Further, “the ALJ could have requested some other
11 doctor’s opinion with respect to the legitimacy of the diagnosis.” *Id.*

12 As correctly noted by the Commissioner, it is the claimant’s burden to
13 furnish evidence supported his disability claim. ECF No. 15 at 12; *see also* 20
14 C.F.R. § 404.1512(a) (“[Y]ou have to prove that you are blind or disabled. You
15 must inform us about or submit all evidence known to you that relates to whether
16 or not you are blind or disabled.”). Although “the ALJ has a special duty to
17 develop the record fully and fairly” it is the claimant’s “duty to prove that [he] is
18 disabled.” *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001). “An ALJ’s duty
19 to develop the record further is triggered only when there is ambiguous evidence or
20 when the record is inadequate to allow for proper evaluation of the evidence.” *Id.*
21 at 459–60. An ALJ only has a duty to request more information from a physician

1 where the record is either ambiguous or “inadequate to allow for proper evaluation
2 of the evidence.” *McLeod v. Astrue*, 640 F.3d 881, 884–85 (9th Cir. 2010); *see also*
3 *Bayliss v. Barnhart*, 427 F.3d 1211, 1217 (9th Cir. 2005) (“An ALJ is required to
4 recontact a doctor only if the doctor’s report is ambiguous or insufficient for the
5 ALJ to make a disability determination.”).

6 As discussed above, the ALJ permissibly gave Dr. Eider’s conclusory
7 opinion “no weight.” The ALJ, after disregarding Dr. Eider’s opinion, found
8 sufficient evidence in the record to make a determination regarding Mr. King’s
9 disability claim. *See id.* (“The ALJ, with support in the record, found the evidence
10 adequate to make a determination regarding [claimant’s] disability. Accordingly,
11 the ALJ did not have a duty to recontact the doctors.”). The ALJ, therefore, did not
12 have a duty to contact Dr. Eider for further information concerning her medical
13 opinion.

14 II. Severe Impairments

15 Mr. King asserts that the ALJ committed reversible error by failing to
16 consider whether his right shoulder limitation and rheumatoid arthritis constituted
17 severe impairments at step two of the sequential process. ECF No. 14 at 6–11.

18 A severe impairment is one “which significantly limits your physical or
19 mental ability to do basic work activities.” 20 C.F.R. § 404.1520(c). Conversely,
20 an impairment is not severe when it is “a slight abnormality (or a combination of
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1 slight abnormalities) that has no more than a minimal effect on the ability to do
2 basic work activities.” SSR 96-3p, 1996 WL 374181, at *1 (July 2, 1996).

3 **A. Right Shoulder Impairment**

4 The ALJ found that Mr. King did not have a severe impairment concerning
5 his right shoulder. ECF No. 9-2 at 25–26, Tr. 24–25. The ALJ noted that, while
6 Mr. King complained about right shoulder pain in 2008, 2010, and 2012, x-rays
7 were negative and Mr. King suffered from only a “mildly decreased range of
8 motion.” ECF No. 9-2 at 26, Tr. 25. The ALJ concluded that “[t]he evidence does
9 not establish that rotator cuff tendinitis versus right shoulder impingement
10 significantly limited the claimant’s functioning for 12 consecutive months and I
11 find he had no severe shoulder impairment.” *Id.*

12 Mr. King submitted additional records to the Appeals Council. *See Brewes v.*
13 *Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1162 (9th Cir. 2012) (noting that the
14 administrative record “includes evidence submitted to and considered by the
15 Appeals Council”). The Appeals Council considered the additional evidence and
16 “found that this information does not provide a basis for changing the [ALJ’s]
17 decision.” ECF No. 9-2 at 2–3, Tr. 1–2.

18 Mr. King’s additional records noted than an MRI “demonstrates [a]
19 complete full thickness tear over the supraspinatus and infraspinatus with
20 significant retraction just beyond the level of the glenoid.” ECF No. 9-10 at 186,
21

1 Tr. 881. However, Dr. Jason C. King advised Mr. King to “hold off from surgery.”

2 *Id.*

3 While the ALJ may have erred in not finding Mr. King’s right shoulder
4 problem to be a severe impairment at step two, “[a] decision of the ALJ will not be
5 reversed for errors that are harmless.” *See Burch v. Barnhart*, 400 F.3d 676, 679
6 (9th Cir. 2005). An error is harmless when it is “inconsequential to the ultimate
7 nondisability determination.” *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050,
8 1055 (9th Cir. 2006).

9 During the hearing, the ALJ asked the VE the following question:
10 “[a]ssuming a . . . person whose maximum physical capability is light and who can
11 reach to shoulder height, but not higher with the dominant right hand, could a
12 person with those characteristics be a parts clerk?” ECF No. 9-2 at 71, Tr. 70. The
13 VE responded that “there would be some erosion” in the total number of parts
14 clerk jobs in the national economy, “but it would be negligible.” ECF No. 9-2 at
15 71–72, Tr. 70–71. The VE concluded that “I don’t see that as being a . . . restriction
16 that would rule out too many of these jobs.” ECF No. 9-2 at 72, Tr. 71.

17 Mr. King, concerning his right shoulder, only complained that he was
18 limited in reaching overhead. *See* ECF No. 9-10 at 186, Tr. 881 (“He continues to
19 have pain with any sort of attempts at overhead lifting. With things at his side it
20 does not really seem to bother him too much.”); ECF No. 9-10 at 188, Tr. 883 (“He
21 says on a day to day basis it really does not bother him that much.”). The VE

1 testified that, concerning the sole functional limitation Mr. King noted regarding
2 his right shoulder, the number of jobs in the national economy would only
3 negligibly decrease. As such, even assuming Mr. King's right shoulder injury was
4 a severe impairment at step two, such error would be harmless as it is
5 "inconsequential to the ultimate nondisability determination." *See Stout*, 454 F.3d
6 at 1055.

7 **B. Rheumatoid Arthritis**

8 The ALJ found that "rheumatoid arthritis was not a severe impairment
9 through the date of this decision." ECF No. 9-2 at 35, Tr. 34. As discussed above,
10 the ALJ gave "no weight" to Dr. Eider's diagnosis. *Id.* Dr. Eider was the sole
11 physician to diagnose Mr. King with rheumatoid arthritis and opine that such an
12 impairment precluded employment. *See* ECF No. 9-10 at 184, Tr. 879.

13 Mr. King asserts that "[t]he evidence and opinion from Dr. Eider—not
14 contradicted by any other source[,], physician or otherwise—supports a finding that
15 indeed, Mr. King has the additional severe impairment of rheumatoid arthritis
16 affecting Mr. King's wrists, hands, shoulders, and feet." ECF No. 14 at 9.

17 As discussed above, the ALJ did not commit reversible error in disregarding,
18 and giving "no weight," to Dr. Eider's opinion. As Dr. Eider was the sole
19 physician to diagnose disabling rheumatoid arthritis, the ALJ consequently did not
20 err in finding that rheumatoid arthritis does not constitute a severe impairment at
21 step two.

III. Credibility Determination

Mr. King alleges that the ALJ found he lacked credibility without providing the requisite “clear and convincing” reasons. ECF No. 14 at 16–18. Specifically, Mr. King argues that the ALJ improperly considered activities of daily living. *Id.*

A. Standard for Making Credibility Determination

The Commissioner’s credibility determination must be supported by findings sufficiently specific to permit the reviewing court to conclude the ALJ did not arbitrarily discredit a claimant’s testimony. *Bunnell v. Sullivan*, 947 F.2d 341, 345–46 (9th Cir. 1991). If there is no affirmative evidence that the claimant is malingering, the ALJ must provide “clear and convincing” reasons for rejecting the claimant’s testimony regarding the severity of symptoms.¹ *Reddick*, 157 F.3d at 722.

If the ALJ finds that a claimant’s statements are not credible, he need not reject the entirety of a claimant’s symptom testimony. *See Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006). The ALJ may find the claimant’s

¹ The Commissioner argues that the proper standard of review of an ALJ’s credibility determination is “substantial evidence.” ECF No. 15 at 17 n.7.

However, as the Ninth Circuit is clear that the “clear and convincing reasons” standard governs, this Court is required to apply binding precedent. *See Garrison v. Colvin*, 759 F.3d 995, 1015 n.18 (9th Cir. 2014).

1 statements about pain to be credible to a certain degree, but discount statements
2 based on his interpretation of evidence in the record as a whole. *See id.* “[T]he
3 ALJ’s interpretation of [a claimant’s] testimony may not be the only reasonable
4 one . . . [b]ut [if] it is still a reasonable interpretation and . . . supported by
5 substantial evidence . . . it is not our role to second-guess it.” *See Rollins v.*
6 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). However, an ALJ’s failure to
7 articulate specifically “clear and convincing” reasons for rejecting a claimant’s
8 subjective complaints is reversible error. *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir.
9 2007).

10 In addition to ordinary techniques of credibility evaluation, the ALJ may
11 consider the following factors when weighing the claimant’s credibility: the
12 claimant’s reputation for truthfulness; inconsistencies either in allegations of
13 limitations or between statements and conduct; daily activities; work record; and
14 testimony from physicians and third parties concerning the nature, severity, and
15 effect of the claimant’s alleged symptoms. *Light v. Soc. Sec. Admin.*, 119 F.3d 789,
16 792 (9th Cir. 1997).

17 **B. Activities of Daily Living**

18 Although the “Social Security Act does not require that claimants be utterly
19 incapacitated to be eligible for benefits . . . and many home activities are not easily
20 transferable to . . . the workplace,” activities of daily living may be considered “if a
21 claimant is able to spend a substantial part of his day engaged in pursuits involving

1 the performance of physical functions that *are* transferable to a work setting.” *Fair*
2 *v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (emphasis in original).

3 The ALJ considered Mr. King’s activities of daily living while discussing
4 the degree of limitation following Mr. King’s back surgery. ECF No. 9-2 at 36,
5 Tr. 35. The ALJ found that “[t]he evidence does not show that the claimant is less
6 active since the back surgery.” *Id.* The ALJ noted that Mr. King “prepared meals,
7 shopped, and drove,” “enjoys puzzles, playing cards, watching television, and
8 music,” and “did not report any problems dealing with people aside from the
9 conflict he had with his boss over refusing to move a piano.” *Id.* The ALJ
10 concluded that Mr. King had a “mild restriction of activities of daily living”
11 following June 2, 2013. *Id.*

12 Mr. King argues that the ALJ impermissibly considered his activities of
13 daily living when discrediting Mr. King’s testimony concerning the degree of
14 limitation caused by his limitations. ECF No. 14 at 18.

15 The Court finds that the ALJ properly noted Mr. King’s activities of daily
16 living were inconsistent with the degree of limitation alleged. Although many of
17 the noted activities, such as completing puzzles, do not transfer to a work
18 environment, an ALJ can still utilize such activities to demonstrate an
19 inconsistency between such activities and the degree of limitations as alleged by
20 the claimant. *See Light*, 119 F.3d at 792. As the ALJ’s decision was limited to a
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1 permissible consideration of activities of daily living, the Court finds that the ALJ
2 did not err when discussing the inconsistency.

3 **C. Other Credibility Factors**

4 Mr. King does not specifically challenge the remaining factors relied upon
5 by the ALJ to find Mr. King not fully credible. Instead, Mr. King generally asserts
6 that the ALJ failed “to provide clear and convincing reasons for rejecting
7 Mr. King’s subjective complaints.” ECF No. 14 at 17.

8 The ALJ based his credibility determination on Mr. King’s failure to seek
9 treatment, *see* ECF No. 9-2 at 28, Tr. 27 (“However, the symptoms the claimant
10 was experiencing related to his back condition were apparently not serious enough
11 to prompt him to seek medical attention between November 24, 2010, and June
12 2012.”), the minimal amount of pain medication taken by Mr. King following back
13 surgery, inconsistency between Mr. King’s alleged pain and Mr. King’s reports to
14 physicians following surgery, and inconsistency with the medical record. *See* ECF
15 No. 9-2 at 38, Tr. 37. As these are permissible factors for an ALJ to consider when
16 making a credibility determination, *see Light*, 119 F.3d at 792, the Court finds that
17 the ALJ did not commit reversible error when finding that Mr. King was not fully
18 credible concerning his degree of limitation.

19 **IV. Disability Cessation Date**

20 The ALJ found that Mr. King’s disability ceased on June 2, 2013. ECF
21 No. 9-2 at 37, Tr. 36. The ALJ based this finding on Mr. King’s testimony “that the

1 back surgery decreased his pain significantly” as well as “imaging [that] showed
2 the osseous contours of the central canal were now open at the L3-4 and L4-5
3 levels.” *Id.* As such, the ALJ concluded that “[t]he medical improvement that has
4 occurred is related to the ability to work because there has been an increase in the
5 claimant’s residual functional capacity.” *Id.*

6 Mr. King argues that the ALJ improperly determined that Mr. King was able
7 to return to work following surgery without obtaining a corroborating medical
8 opinion. ECF No. 14 at 14–15. Mr. King asserts that the ALJ must “find medical
9 improvement in cessation cases, including cases in which a closed period of
10 disability has been established.” *Id.* at 15.

11 The Commissioner contends that “[t]he ALJ determined Plaintiff’s disability
12 ceased based on his medical records and testimony, which revealed significant
13 medical improvement related to his ability to do work, one month post-surgery.”
14 ECF No. 15 at 14. Further, the Commissioner notes that “whether a claimant can
15 work is an administrative decision reserved to the Commissioner.” *Id.* at 15 (citing
16 20 C.F.R. § 404.1527(d)).

17 The Commissioner cannot terminate benefits of persons determined to be
18 disabled until the Commissioner comes forth with evidence of medical
19 improvement. *See Lopez v. Heckler*, 725 F.2d 1489, 1496 (9th Cir. 1984), *vacated*
20 *by Heckler v. Lopez*, 469 U.S. 1082 (1984). However, Mr. King does not note any
21 decision finding that the Mr. King’s testimony cannot constitute evidence of

1 medical improvement. Further, in addition to noting the claimant's testimony, the
2 ALJ cited imaging showing improvement following surgery. As the ALJ did, as
3 required, cite evidence of medical improvement, the Court cannot find that the
4 ALJ's decision was not supported by substantial evidence in the record absent
5 authority demanding a physician's opinion.

6 Further, as above, "[a]n ALJ's duty to develop the record further is triggered
7 only when there is ambiguous evidence or when the record is inadequate to allow
8 for proper evaluation of the evidence." *Mayes*, 276 F.3d at 459. Mr. King has
9 failed to demonstrate that the record was either ambiguous or inadequate, thereby
10 failing to trigger the ALJ's duty to obtain further evidence.

11 CONCLUSION

12 Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
14 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
15 **GRANTED**.

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1 3. The District Court Clerk is directed to enter Judgment dismissing the
2 Complaint and the claims therein with prejudice.

3 The District Court Clerk is directed to file this Order, enter Judgment as
4 directed above, provide copies to counsel, and **close this case**.

5 **DATED** this 4th day of April 2016.

6
7 *s/ Rosanna Malouf Peterson*
8 ROSANNA MALOUF PETERSON
9 United States District Judge
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